

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of FAITH POTTER, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TRAVIS POTTER,

Respondent-Appellant.

UNPUBLISHED

February 3, 2005

No. 257876

Clare Circuit Court

Family Division

LC No. 02-000254-NA

Before: Zahra, P.J., and Neff and Cooper, JJ.

MEMORANDUM.

Respondent appeals as of right from the trial court's order terminating his parental rights to the minor child under MCL 712A.19b(3)(g). We affirm.

Respondent's sole claim is that the trial court clearly erred in finding that the statutory ground for termination was established by clear and convincing evidence. We disagree.

The evidence showed that respondent had never been the child's custodian, and failed to seek legal custody before the child was made a temporary court ward based on the mother's plea of admission. At the time of the termination hearing, respondent was incarcerated in Missouri and his earliest release date was in May 2005. Considering that respondent had been incarcerated for a theft offense for most of the child's life, had a prior parole violation for which he was incarcerated, and was in disciplinary segregation for a positive drug test at the time of the termination hearing, the trial court did not clearly err in finding that respondent failed to provide proper care or custody for the child, and that there was no reasonable expectation that he would be able to provide proper care and custody within a reasonable time considering the child's age.¹

¹ We note that in rendering its decision the trial court stated that defendant's testimony was "compelling" and that it believed defendant loves his child. However, given the facts as recited in this opinion, the child's age, and the uncertainty of defendant's future prospects for a stable life, it could reach no other conclusion than that termination of parental rights was the necessary decision.

MCR 3.977(J); *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The fact that a relative came forward to express an interest in having the child placed in her home and to assist respondent after his release from prison did not preclude the trial court from finding that MCL 712A.19b(3)(g) was established by clear and convincing evidence.

Affirmed.

/s/ Brian K. Zahra

/s/ Janet T. Neff

/s/ Jessica R. Cooper